IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5172 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHIMJIBHAI PETHABHAI SARVAIYA

Versus

DSP RAJKOT

Appearance:

1. Special Civil Application No. 5172 of 1999

MRS SUMAN KHARE for Petitioner No. 1

MR KL PANDYA AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 28/08/2003

ORAL JUDGEMENT

Heard learned advocate Ms.Suman Khare on behalf of the petitioner and learned AGP Mr.K.L.Pandya for respondent - State Authority.

The grievance of the petitioner is that promotion though the petitioner was entitled has been illegally denied to the petitioner and juniors to the petitioner those who are also facing criminal complaints and also departmental inquiry held against them, have been promoted on promotional post but case of the petitioner was not considered by the respondent only on the ground that pendency of departmental inquiry and criminal case which was pending against the petitioner.

Learned AGP Mr.K.L.Pandya has submitted that the respondent authority has passed a detail order in respect of the grievance raised by the petitioner in the present petition on 30th March, 1999 and whole details given at length and therefrom it transpires that the case of the petitioner was considered for promotion by the Committee from 1989 onwards and on each and every occasion but the Committee had come to the conclusion that the petitioner is not found fit for promotion and ultimately, the Committee which was made on 16th December, 1998, where the petitioner was found fit and therefore, with effect from 23rd December, 1998, promotion was given to the petitioner. Therefore, learned AGP Mr.Pandya has submitted that prayer which has been made by the petitioner to have retrospective effect of such promotion from 1989 cannot be accepted.

I have considered submissions made by the learned advocates for the parties and also perused the order dated 30th March, 1999. After perusing the entire order, wherein at length each aspect has been examined in detail by the respondent and ultimately, in the said order, specific averments have been made to the effect that from 1989 on each occasion, the Committee has considered case of the petitioner and the petitioner was not found fit and therefore, promotion was not given to the petitioner. But ultimately on 16th December, 1998 the committee has selected the petitioner for promotion and accordingly, promotion order was issued in favour of the petitioner with effect from 23rd December, 1998. In the said order, it is made clear by the authority that promotion is based upon principle of seniority cum merits and also required to consider service record of the employee. As and when second occasion where the question of further promotion arises, the respondent will consider the case of the petitioner. After punishment has been reduced and petitioner has been reinstated by the authority, by order dated 14th September, 1995, subsequently, from 1987-98 all increments which are available to the petitioner has been granted in favour of the petitioner. Therefore,

according to my opinion, there is nothing wrong in not granting to the petitioner grant of benefit of retrospective effect when on each occasion the case of the petitioner was considered by the Committee but the petitioner was not found fit by the committee. Therefore, there is no substance in the present petition and the same deserves to be rejected.

In view of above discussion, present petition fails and same is rejected accordingly. Rule is discharged with no order as to costs.

Date : 28.8.2003 [H.K.Rathod, J.]

#kailash#